



Australian Government
Department of Defence

Reference: 2017/1001993/1/qR461516

FOI 178/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act), for access to:

“...Documents relating to the Singapore Joint Development Training initiative announced in May 2016.

In particular I request all correspondence between the department and the Federal Member for Capricornia, Michelle Landry, on the SJDTI [Item 1] and all advice to the Defence Minister on the subject of land resumptions required for the SJDTI [Item 2]....”

excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents.

FOI decision maker

2. I am the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I identified 12 documents as matching the description of the request. One document is provided once in relation to Item 1 and once in relation to Item 2.

4. The decision in relation to each document is detailed in a schedule of documents.

5. I have added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:

- a. release 8 documents in full;
- b. partially release 4 documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds that the deleted material is considered exempt under section 33(a)(iii) [Documents affecting international relations], section 47C [public interest conditional exemptions-deliberative process], and section 47F [public interest conditional exemptions-personal privacy] of the FOI Act;
- c. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

7. In making my decision, I had regard to:

- a. the terms of the request;

- b. the content of the identified documents in issue;
- c. relevant provisions in the FOI Act;
- d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
- e. advice received from third parties consulted under section 27 [consultation – business documents]; and
- f. advice provided by Estate and Infrastructure Group, Strategic Policy and Intelligence Group, and the Singapore Joint Development Implementation Team.

Reasons for decision

Section 33 – Documents affecting international relations

8. The international relations information considered exempt, under sub-section 33(a)(iii) of the FOI Act, relates to Australia maintaining good working relations with other governments and their officials. Any damage to international confidence and close relationships with other countries would seriously affect Defence's ability to deliver on its obligations to protect Australia's interests. Release of information about Defence's relationships with other governments and officials would cause damage to those relationships, and is therefore exempted under sub-section 33(a)(iii) of the FOI Act.

9. Paragraph 5.36 of the Guidelines states that *the phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments...* Any damage to international confidence would seriously undermine the long-standing relationship between Australia and Singapore which would have widespread implications.

Section 47C – Deliberative process

9. I found that the documents contain material, being proposed options available to Defence in regards to the possible expansion of the training areas, specifically land resumption. I considered whether this information may be exempt under subsection 47C(1) of the FOI Act.

10. Subsection 47C(1) of the FOI Act states '*A document is conditionally exempt if its disclosure under the Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative process involved in the functions of...an agency... or a Minister.*' Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

11. I have taken into account the Guidelines noting that one consideration in the exemption under section 47C is whether the document includes content of a deliberative matter. I have determined that some of the material contained in the documents is exempt under section 47C as it is deliberative.

12. I then turned my mind to the question of whether the information is purely factual material. In relation to section 47C considerations under the FOI Act, I have taken into account the Guidelines that 'purely factual material' that would not be regarded as deliberative matter would include:

- content that is merely descriptive

- incidental administrative content
- procedural or day-to-day content
- the decision or conclusion reached at the end of the deliberative process
- matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process.

13. I have also taken into account, while purely factual material is not considered to be deliberative matter, where a document contains factual material that is related to the provision of policy advice and elaborates its context or likely impact, it may potentially come within the deliberative document exemption.

14. Taking the above into consideration, I am satisfied that parts of the documents contain deliberative matter that is conditionally exempt under subsection 47C(1) of the FOI Act.

Section 47F - Personal privacy

15. In my examination of the documents I also considered whether:

- a. the document contained personal information;
- b. the disclosure of the personal information would be unreasonable; and
- c. whether the disclosure of this information would, at this time, be contrary to the public interest.

16. In my examination of the documents I identified information that would reveal the identity of certain individuals.

17. As a person's identity could be apparent or reasonably ascertainable from the identified information, I have decided that it constitutes personal information.

18. In determining whether release of the above personal information is unreasonable, I took into account, inter alia:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt within the document; and
- c. the availability of the information from publicly accessible sources.

19. Against these criteria, I found:

- a. the context in which the identified personal information is not well known;
- b. the persons to whom the information relates is not widely known to be (or to have been) associated with the matters dealt with in the documents; and
- c. the context of the identified personal information is not available from publicly accessible sources.

20. After considering all of the above, I am satisfied that the specific identified information is conditionally exempt under section 47F of the FOI Act.

Sections 47C and 47F - Public interest considerations

21. In determining whether to release the documents, I considered the Guidelines together with a range of factors that favour access to a document set out in sub-section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act. I had regard to whether giving

access to the applicant at this time would, on balance, be contrary to the public interest. Specifically, I considered if disclosure of the document would:

- a. promote the objects of the FOI Act;
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure; and
- d. allow a person to access her or his personal information.

22. I consider that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. The disclosure of the advice, opinions, recommendations and matters on possible options for the implementation of plans for the Minister's consideration would not, however, increase public participation in Government processes nor would it, in my view, increase scrutiny or discussion of Government activities. I consider this to be particularly relevant when the Minister has stated categorically that there will be no land resumptions and Defence will only acquire land from willing sellers.

23. While I considered that disclosure may increase scrutiny or discussion of Defence activities, I found disclosure of some information in the document would reveal sensitive considerations associated with Defence activities in relation to capabilities and future direction. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a public interest in maintaining the confidentiality of some material contained in the documents. Disclosure of some of the material contained in the documents would potentially have a significant impact on the Commonwealth's ability to effectively manage its financial and property interests.

24. Further, paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factor I find particularly relevant to disclosing personal information in relation to this request is that release of this information could reasonably be expected to prejudice the protection of an individual's right to privacy.


25. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47C and 47F of the FOI Act.

26. I have considered the irrelevant factors in sub-section 11B(4) [irrelevant factors] and did not take these in to account when making my decision.

Further Information

27. A number of the documents matching the scope of this request were classified or contained dissemination limiting markers. I have declassified the versions of the documents that are approved for release.

28. Further to paragraph 6b above, the documents contained a large volume of pages that were irrelevant to the scope of the request. In this instance, pages fully redacted in accordance with section 22(b)(ii) have been removed from the document. A total of 293 pages have been removed.

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Accredited Decision Maker
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